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OFFICE OF PETITIONS

In re Application of :
Protz, et al. :
Application No. 09/806,816 : **ON PETITION**
Filed: July 6, 2001 :
Attorney Docket No. 10028.00 :
For: METHOD AND DEVICE FOR THE
HANDLING AND THERMALLY
TREATING BAG OR FILM PACKAGINGS

This is a corrected decision on the petition under 37 CFR 1.181, filed April 20, 2006, to withdraw the holding of abandonment.

The petition under 37 CFR 1.181 is **GRANTED**.

The Office contended that the above-identified application became abandoned for failure to reply to the September 29, 2005 final Office action, which set an extendable three month period for reply. No reply or extension of time being received, the Office contended that this application became abandoned on December 30, 2005. A Notice of Abandonment was mailed on April 20, 2006.

Petitioners allege that the September 29, 2005 final Office action was not received.

The showing required to establish non-receipt of an Office communication must include:

1. A statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received.
2. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.¹

¹ See notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).

While petitioners have provided a minimal showing in compliance with (1) and (2) above, there are inconsistencies in the petition. In the second full paragraph of page two of the petition Attorney Ryan states that he conducted a review of the firm's file for Application Serial Number 09/806,816. The next sentence is: "Though I have searched the file of Application Serial Number 09/674,816, I did not find the subject Office Action dated September 29, 2005." The remainder of the petition references Application Serial No. 09/674,816, which is not the correct application serial number.

The docket report submitted with the petition is for Application Serial No. 09/806,816, but the petition cites Application Serial No. 09/674,816.

Petitioners list inconsistent application serial numbers. However, the header on each page of the petition is Application Serial No. 09/806,816 and the docket record referenced in the petition is for Application Serial No. 09/806,816, not for Application Serial No. 09/674,816. The Office assumes that petitioners intended to cite Application Serial No. 09/806,816 throughout the petition. However, the Office does not wish to rely on assumptions without underscoring the fact that practitioner owes a duty of candor to this Office. If practitioner did not intend to cite Application Serial No. 09/806,816 throughout the petition, practitioner is required to provide the Office with a statement to that effect.

Petitioners have established nonreceipt of the September 29, 2005 final Office action. The petition is granted, the April 20, 2006 Notice of Abandonment is vacated, and the holding of abandonment is withdrawn.

After the mailing of this decision, the application will be returned to Technology Center AU 1761 for the re-mailing of the September 29, 2005 final Office action with a new period for response.

Telephone inquiries may be directed to the undersigned at (571) 272-3230.



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